

IMPORTANT – READ CAREFULLY BEFORE CLICKING THE “ACCEPT” BUTTON

TERMS AND CONDITIONS: RULES AND POLICIES FOR ACT® WORKKEYS ESTIMATOR®

BY SELECTING “I AGREE,” CUSTOMER INDICATES ITS ACKNOWLEDGEMENT AND ACCEPTANCE TO THE FOLLOWING TERMS AND CONDITIONS. IF CUSTOMER DOES NOT AGREE TO THE FOLLOWING TERMS AND CONDITIONS, DO NOT PROCEED WITH ORDERING OR USING THE WORKKEYS ESTIMATOR.

Agreement: These ACT WorkKeys Estimator Terms and Conditions are the terms of a binding legal Agreement (“Agreement”) between the party agreeing to this Agreement (“Customer”) who will use ACT® WorkKeys Estimator® (“WorkKeys Estimator”) and ACT, Inc., a non-profit corporation having a principal place of business at 500 ACT Drive, Iowa City, IA 652243 (“ACT”) This Agreement applies to the Customer’s use of WorkKeys Estimator. Please read this Agreement carefully. By selecting “I Agree” and using WorkKeys Estimator, the Customer expressly agrees to the terms of this Agreement.

Summary of Product: WorkKeys Estimator® (“Product”) is a step-by-step process used to estimate the WorkKeys skill and skill level requirements needed for entry into and effective performance in training programs, career and technical education programs, apprenticeship programs, and jobs at small employers as defined by the Uniform Guidelines for Employee Selection Procedures.

Customer Access to Product: The Customer may only give access to WorkKeys Estimator materials to people participating in the WorkKeys Estimator process as “Coordinator,” “Management,” or as an “Expert.”

ACT Intellectual Property Rights: WorkKeys Estimator is a proprietary product and service of ACT and is protected by federal and international copyright laws. Any authorized copy of the WorkKeys Estimator made by the Customer: (a) will remain the exclusive property of ACT; (b) will be subject to this Agreement; and (c) must include all copyright or other intellectual property rights notices contained in the original.

ACT owns the Product, including but not limited to, paper based or online documents, related materials, publications, data, reports, documentation, trademarks and all associated intellectual property rights, including any and all derivatives or modifications created during the term of this Agreement (collectively, the “ACT Materials”). Except as expressly granted herein, Customer does not acquire any right, title, or interest in or to the ACT Materials. Customer shall not copy, modify, enhance, reverse engineer, or make any addition to the ACT Materials. Customer may not sell or otherwise transfer the ACT Materials to any other person. Customer may not (a) use the ACT Materials for any other purpose, (b) assign, license, sell, loan, lease, or otherwise transfer the ACT Materials in whole or in part, (c) copy, or allow anyone else to copy, in whole or in part, the ACT Materials, or (d) modify, reverse engineer, decompile, or disassemble the ACT online system or Materials.

ACT may pursue all available civil and criminal remedies if its intellectual property rights are violated, including.

Customer Representations and Warranties: By selecting “I Agree” and by using WorkKeys Estimator, the Customer represents and warrants to ACT that: (1) the information it provided to ACT is true and accurate; (2) that Customer agrees to be bound by, and will comply with, this Agreement and ACT policies for WorkKeys Estimator; and (3) Customer will only use WorkKeys Estimator Outputs (the “Outputs”) in conjunction with ACT WorkKeys® assessments.

Limitations of WorkKeys Estimator: WorkKeys Estimator is a product designed to help the Customer identify WorkKeys skills and skill levels that may be relevant to the Customer’s use. Thus, WorkKeys Estimator is only compatible with the ACT WorkKeys assessments and not with other assessments created by competitors of ACT. The Customer shall only use WorkKeys Estimator in conjunction with the ACT WorkKeys assessments. The Customer shall not use WorkKeys Estimator for any purpose that is to ACT’s detriment or commercial disadvantage, such as to resell ACT’s confidential information or WorkKeys Estimator material without ACT’s prior written permission.

Limitations of WorkKeys Estimator Outputs: The Outputs, which are a determination of the levels of achievement on the ACT WorkKeys assessments and created by using WorkKeys Estimator are only compatible when used in conjunction with ACT WorkKeys assessments, and not with other assessments created by competitors of ACT. The Customer shall only use the Outputs in conjunction with the ACT WorkKeys assessments. The Customer shall not use the Outputs for any purpose that is to ACT's detriment or commercial disadvantage, such as to share and use the Outputs with competitors of ACT.

ACT WARRANTY DISCLAIMER: EXCEPT AS SET FORTH IN THIS AGREEMENT, ACT EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND OR NATURE, EXPRESS OR IMPLIED AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USE OF TRADE.

Privacy Policy and Notice of Collection of Personally Identifying Information: The parties acknowledge and agree that ACT may use and disclose the data collected from the use of WorkKeys Estimator, as set forth in ACT's Privacy Policy available at www.act.org/privacy, as amended from time to time. When the Customer uses WorkKeys Estimator, it consents to the ACT Privacy Policy, which is incorporated into this Agreement by reference.

Relationship of the Parties: The parties to this Agreement are independent contractors. Neither party shall have the right or authority or shall hold itself out to have the right or authority to bind the other party, nor shall either party be responsible for the acts or omissions of the other.

Force Majeure: ACT shall not be liable to Customer for any delay or failure to perform, which delay or failure is due to causes or circumstances beyond its control, including, without limitation, the actions of Customer, national emergencies, fire, flood, inclement weather, epidemics, or catastrophe, acts of God, governmental authorities, or parties not under the control of ACT, insurrection, war, riots, or failure of transportation, communication, or power supply. ACT shall exercise commercially reasonable efforts to mitigate the extent of the excusable delay or failure and its adverse consequences; provided, however, that should any such delay or failure continue for more than sixty (60) days, the Agreement may be terminated by either the party upon notice to the other.

Termination and Cancellation: Either party may terminate this Agreement upon written notice to the other party in the event that other party breaches its obligations under this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach. This Agreement may also be terminated without cause at any time by either party giving thirty (30) days written notice to the other. Upon the expiration or termination of this Agreement, the obligations set forth in the following provisions of the Agreement shall survive: ACT Intellectual Property Rights, and ACT Warranty Disclaimer.

Assignment: This Agreement may not be assigned by Customer without the express prior written consent of ACT. No permitted assignment shall relieve Customer of its obligations under the Agreement.

No Third Party Beneficiaries: The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of the Parties based upon this Agreement.

Severability; Headings; Governing Law: Should any provision of this agreement be held by a court to be unenforceable, such provision shall be modified by the court and interpreted so as to best accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of the Agreement shall remain in full force and effect. Headings used in the Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. This Agreement shall be governed by the laws of the State of Iowa.

Entire Agreement: This Agreement, including all incorporated or referenced DOS, constitutes the entire agreement between the parties with respect to the Assessments and Services and supersedes all other prior agreements and understandings, both written and oral. The terms and conditions contained in this

Agreement are the only conditions applying to the delivery of the Assessments and Services. Except as may be incorporated in a DOS, ACT expressly objects to and rejects any different or additional terms included in Customer's request for proposal, quotation, purchase order, acknowledgment form, or other documents that purport to bind the parties. Certain Assessments and Services may be subject to additional or different terms and conditions, which are set forth in the DOS. No waiver, consent, modification, or amendment to this Agreement shall be binding unless in writing and signed by both parties

Changes to These Terms and Conditions: These Terms and Conditions are subject to change for security reasons, reasons related to changes in applicable laws, or other reasons. When these Terms and Conditions change, ACT will post the revised Terms and Conditions at www.act.org. The Customer agrees to be bound by such posted Terms and Conditions. The Customer agrees to check for revised Terms and Conditions prior to using WorkKeys Estimator.

All ACT policies referenced in this Agreement, including the ACT Privacy Policy (www.act.org/privacy), are part of this Agreement and are binding on the Customer, so it should review them carefully. Any questions should be directed to the Industrial-Organizational Psychology Department (jpanswers@act.org or 319-337-1724) in advance of using WorkKeys Estimator.